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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/806,758 | 08/20/2002 | Malte Neuss | THIE.0009 | 4917 |

7590 03/01/2005

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EXAMINER

STEWART, ALVIN J

ART UNIT PAPER NUMBER

3738

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|------------------------------|--|
| Office Action Summary | Application No. 09/806,758 | Applicant(s) NEUSS ET AL. | |
| | Examiner Alvin J Stewart | Art Unit 3738 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-28 and 34-45 is/are rejected.
- 7) ☒ Claim(s) 29-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 08, 2005 has been entered.

Claim Objections

Claim 27 is objected to because of the following informalities: the claim is almost the same as claim 25. Please advise. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 28, 30, 32, and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 recites the limitation "the circumference" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recites the limitation "the middle section" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 25, 27, 28, and 34-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Gaschino et al US Patent 6,325,821 B1.

Gaschino discloses a stent comprising a plurality of coupled flexible zigzag annular elements (2) connected to each other by a plurality of bending elements having a bow shaped connector bars (3). Regarding the star shaped segment, the above reference is capable of disclosing a star shaped segment when the stent is in the compressed and expanded positions (see attachment).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaschino et al US Patent 6,325,821 B1 in view of Cox US Patent 6,461,380 B1.

Gaschino et al discloses the invention substantially as claimed. However, Gaschino does not disclose connector bars having a width from 10 to 50% smaller than the width of the straight connector bars.

Cox teaches connector bars having a width from 10 to 50% smaller than the width of the straight connector bars for the purpose of increasing the flexibility at the connecting bars.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Gaschino et al reference with the connecting bars of the Cox reference in order to increase the flexibility at the connecting bars.

Claims 38-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaschino et al US Patent 6,325,821 B1 in view of Wright et al US Patent 6,273,913 B1.

Gaschino et al discloses the invention substantially as claimed. However, Gaschino et al does not disclose resorbable material, polyester, drugs, and radioactive materials.

Wright et al teaches a stent having a plurality of coatings (e.g. coatings having resorbable materials (see col. 7, lines 2-8), polyester (see col. 6, lines 28-31), drugs (see col. 6, lines 25-28), and radioactive materials (see col. 5, line 19)) for the purpose of preventing inflammation and the proliferation of smooth muscle cells by providing a controlled diffusion of drugs from the stent to the artery wall (see col. 3, lines 48-52 and col. 5, lines 53-57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Gaschino et al stent with the plurality of coatings of the Wright et al reference in order to prevent the inflammation and the proliferation of smooth muscle cells by providing a controlled diffusion of drugs from the stent to the artery wall.

Allowable Subject Matter

Claims 29-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 25-45 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 703-305-0277. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**ALVIN J. STEWART
PRIMARY EXAMINER**


Alvin J Stewart
Primary Examiner
Art Unit 3738

February 24, 2005.